

**Letter of Findings Number: 02-20120507P
Corporate Income Tax-Penalty
For the Tax Year 2010**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the penalty for failure to file an S corporation tax return in a timely manner.

STATEMENT OF FACTS

Taxpayer is an S corporation. Taxpayer did not file its S corporation income tax return for 2010 in a timely manner. Taxpayer was assessed a \$250 penalty for late filing, which Taxpayer protested.

I. Tax Administration–Penalty.

DISCUSSION

Taxpayer was established as an Indiana S corporation in 2009. Taxpayer had failed to file IT-20S timely returns for the years 2009 and 2010. In 2012 Taxpayer filed the 2009 and 2010 returns and was assessed a \$250 penalty for each of those years for the failure to file the tax returns in a timely manner. The Department subsequently waived the 2009 penalty as a courtesy for a first-time incident. However the 2010 penalty remained. Taxpayer protested the imposition of the 2010 penalty.

IC § 6-8.1-10-2.1(g) provides:

A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the return shall pay a penalty of ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250).

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1(d). The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. **Ignorance of the listed tax laws, rules and/or regulations is treated as negligence.** Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

(Emphasis added).

Taxpayer argued that it relied on the Department's IT-20S instruction booklet, as well as information on the Department's website, for guidance in its tax return filing obligations. Taxpayer read the 2010 booklet – under the heading "Who Must File and When" – to mean that only S corporations that were doing business in Indiana and deriving gross income in Indiana had a filing obligation. Since Taxpayer claims it did not have income for those two years, Taxpayer did not file returns. When, in 2012, Taxpayer finally realized that it had a filing obligation

when it incurred losses, Taxpayer then filed the 2009 and 2010 returns at the same time in 2012 on its own initiative. The late filing of the returns triggered the penalties.

Generally ignorance of the law is treated as negligence. [45 IAC 15-11-2](#). In this instance, because the Department waived the penalty for 2009 (and the 2010 return was filed at the same time), and because Taxpayer has provided sufficient documentation and explanation to demonstrate that it did not willfully neglect its tax filing obligations, the Department will waive the 2010 \$250 penalty.

FINDING

Taxpayer's protest is sustained.

Posted: 05/29/2013 by Legislative Services Agency
An [html](#) version of this document.